

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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SKLER LUSK, et al.,

Plaintiffs,

v.

SERVE U BRANDS, INC., et al.,

Defendants.

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ORDER

17-CV-6451T

Plaintiffs having filed a motion seeking conditional certification and notice pursuant to the Fair Labor Standards Act (Docket # 63), defendants having opposed that motion (Docket # 68), this Court having reviewed the submissions, oral argument having been conducted on October 4, 2018, the Court having ordered further submissions from the parties, and those submissions having been received on October 12, 2018; it is hereby

ORDERED, that the parties shall meet and confer regarding the form of the plaintiffs' proposed notice (Docket # 63-3) and submit to the Court by no later than **October 29, 2018**, a jointly proposed notice if they are able to agree upon the form of the proposed notice. If the parties are unable to agree, they shall submit competing versions of the proposed notice, with redline edits where applicable, identifying any remaining disputes. It is further

ORDERED, that further oral argument regarding the post-hearing submissions shall be heard before the undersigned on **November 8, 2018**, at **2:00 p.m.**, at 2310 United States Courthouse, 100 State Street, Rochester, New York. It is further

ORDERED, that counsel shall appear before the undersigned on **November 8, 2018**, at **2:00 p.m.**, 2310 United States Courthouse, 100 State Street, Rochester, New York, for

the purposes of entry of a case management order as required by Rule 16(b) of the Federal Rules of Civil Procedure; and it is further

**ORDERED** that pursuant to Rule 26(f) of the Federal Rules of Civil Procedure, the parties shall confer at least 21 days prior to the Rule 16(b) hearing as scheduled above for the purpose of preparing the required “Proposed Discovery Plan” (PDP). The PDP shall be in writing and shall specifically address relevant issues concerning the management of all pretrial discovery practice in this case, **including:**

1. In his referral order, Judge Telesca has specifically encouraged the parties to consider the provisions of 28 U.S.C. §636(c) governing consent to complete disposition of the case (including trial, if necessary) by this Court. **The parties shall state in the PDP whether or not unanimous consent to Magistrate Judge jurisdiction has been agreed upon.**
2. Deadline for compliance with the mandatory disclosure requirements found in Rule 26(a)(1) of the Federal Rules of Civil Procedure. Any objections to the required disclosures must also be stated in the PDP.
3. Deadline for the filing of motions to amend the pleadings or add parties.
4. Deadline for completion of fact discovery.
5. If expert discovery is contemplated by any party, a deadline for the completion of all expert discovery, including full compliance with Rule 26(a)(2) regarding the identification and filing reports of testifying experts.
6. Deadline for the filing of motions to compel discovery.
7. Any Orders that should be entered under Rule 26(c) (protective/confidentiality orders).
8. Any changes in the limitations on discovery as provided in Rule 30 (oral depositions), and Rule 33 (interrogatories practice) and Rule 34 (document requests).

9. Any issues that the parties reasonably foresee concerning discovery of electronically stored information, including the form or forms in which it should be produced.
10. Any agreements between the parties concerning assertions of claims of attorney-client privilege or work-product protection after information is produced, including agreements reached under Federal Rule of Evidence 502.
11. Deadline for the filing of dispositive motions.
12. The advisability and timing of a judicially supervised settlement conference or other alternative dispute resolution, including mediation.
13. The parties shall advise whether a jury trial is required and the estimated length of the trial.

After meeting, the parties shall prepare a written PDP as required by Rule 26(f) and electronically file the PDP report with the Clerk's Office no later than 4 business days prior to the Rule 16(b) conference as herein scheduled. At the conclusion of the Rule 16(b) conference and after conferring with the parties, this Court will issue a Case Management Order governing all further pretrial proceedings in this action. Out-of-town attorneys may submit a letter requesting to participate in the Rule 16 conference by telephone.

**IT IS SO ORDERED.**

  
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MARIAN W. PAYSON  
United States Magistrate Judge

Dated: Rochester, New York  
October 15, 2018